IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

BEVERLY ANDERSON,	*	[FILED:
	*	NOV 16 2004]
Plaintiff,	*	
vs.	*	No. 4:02cv00629 SWW
	*	
DASSAULT AVIATION,	*	
	*	
Defendant/	*	
Third-Party	*	
Plaintiff,	*	
vs.	*	
	*	
HONEYWELL, INC.	*	
	*	
Third-Party	*	
Defendant.	*	

BEVERLY ANDERSON,	*	
	*	
Plaintiff,	*	
vs.	*	No. 4:04cv00798 SWW
	*	
DASSAULT FALCON JET	*	
CORPORATION and	*	
HONEYWELL, INC.,	*	
	*	
Defendants.	*	

MEMORANDUM AND ORDER

Beverly Anderson ("Anderson"), a flight attendant on a jet manufactured by Dassault Aviation, a French corporation headquartered in Paris, France, brings this consolidated action

against Dassault Aviation, Dassault Falcon Jet Corporation ("Dassault Falcon Jet"), and Honeywell, Inc., seeking damages for injuries she claims to have suffered when the jet on which she was a flight attendant underwent a series of pitch oscillations while on a flight from Portland International Airport in Oregon to Kent County International Airport in Michigan. The matter is before the Court on motion of Dassault Aviation for an Order declaring that Michigan substantive law applies to all claims against it in this action [doc.#36]. Anderson has responded in opposition to Dassault Aviation's motion, and Dassault Aviation has filed a reply to Anderson's response. Having carefully considered the matter, the Court finds that Dassault Aviation's motion for an Order declaring that Michigan substantive law applies to all claims against it in this action should be and hereby is granted.

I.

According to the complaint, on October 10, 1999, Anderson, a Michigan resident, was a flight attendant on a Dassault Falcon 900B jet, which was owned by her employer, Amway Corporation, a Michigan corporation. The jet was approaching its intended destination, Grand Rapids Michigan, when the pilot pulled back on the controls in an effort to disengage the autopilot and level off the aircraft. The digital flight computer responded to this external pitch up maneuver by initiating a nose down trim motion. The combination of these two events caused the jet to undergo a series of pitch oscillations between a 3-degree aircraft nose up and a 4.5 degree aircraft nose down. Anderson, who was in the galley readying the plane for landing when the pitch oscillations occurred, was thrown about in the jet, causing her to violently bounce off the floor and ceiling several times, resulting in severe injuries.

Anderson filed suit in the United States District Court for the Western District of Michigan against Dassault Aviation, as well as Honeywell, a corporation headquartered in Minnesota at the

time of the accident and the manufacturer of the autopilot,[1] and Dassault Falcon Jet, a wholly-owned subsidiary of Dassault Aviation headquartered in New Jersey that sells and supports Dassault Falcon Jets throughout North and South America and the Pacific Rim countries of Asia, including the People's Republic of China. Dassault Aviation subsequently filed a motion to dismiss for lack of personal jurisdiction. Anderson responded in opposition to Dassault Aviation's motion and also requested that the entire action be transferred to Arkansas, where Dassault Falcon Jet operates a large "completion center and service base."

By Order dated October 4, 2002, the district court granted Dassault Aviation's motion to dismiss for lack of personal jurisdiction and denied without prejudice Anderson's motion to transfer the action to Arkansas. *See Anderson v. Dassault Aviation, et al.*, No. 1:01cv00640 (W.D. Mich. Oct. 4, 2002). In so ruling, the district court stated that "[i]n the event [Anderson] in successful in establishing that Dassault Aviation is subject to personal jurisdiction in Arkansas, [Anderson] may renew her request for transfer as to the remaining Defendants in this case." *Id.*

On October 10, 2002, Anderson filed suit against Dassault Aviation in this Court, asserting that the jet manufactured and sold by Dassault Aviation was in a defective condition which rendered it unreasonably dangerous, and that Dassault Aviation is strictly liable for her damages as a supplier of a defective product. Anderson's action against Honeywell and Dassault Falcon Jet remained pending in the Western District of Michigan, awaiting a ruling from this Court on whether Dassault Aviation is subject to personal jurisdiction in Arkansas.[2]

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[1] Honeywell has since established its headquarters in New Jersey following a merger.

[2] According to pleadings in the Michigan litigation, Dassault Aviation has

Dassault Aviation subsequently moved this Court to dismiss Anderson's complaint for lack of personal jurisdiction. Dassault Aviation argued dismissal for lack of personal jurisdiction was warranted because the cause of action occurred in Michigan, Anderson is a Michigan resident, Anderson's medical treatment occurred in Michigan where she resides, and Dassault Aviation is a French corporation having no contacts with Arkansas sufficient to support general jurisdiction consistent with the limitations placed upon the Court by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Arkansas' long-arm statute, Ark. Code Ann. § 16-4-101. Anderson, on the other hand, in what essentially was an alter ego argument, argued that Dassault Aviation was subject to personal jurisdiction in this Court as it "has progressively adopted a course of action to purposefully blur the distinction between [Dassault Aviation] and its exclusive distributor and wholly owned subsidiary, Dassault Falcon Jet," that Dassault Falcon Jet's activities are "imputed" to Dassault Aviation, that Dassault Aviation and Dassault Falcon Jet share two officers, and that "[t]he business jet in this case was 'completed' *and* delivered in Little Rock, Arkansas to Ms. Anderson's employer."

By Memorandum and Order dated April 29, 2003, this Court, relying in large part on the Eighth Circuit's then-recent opinion in *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642 (8th Cir. 2003), granted Dassault Aviation's motion to dismiss for lack of personal jurisdiction.[3] This Court determined that Anderson

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been served in France in accordance with the requirements of the Hague Convention. *See Anderson v. Dassault Aviation, et al.*, No. 1:01cv00640 (W.D.Mich.) (Pl. Br. at 2 (10-3-03)).

[3] In *Epps*, the Eighth Circuit held that in situations in which the defendant is a nonresident parent corporation, "personal jurisdiction can be based on the activities of the nonresident corporation's in-state subsidiary, but only if the parent so controlled and dominated the affairs of the subsidiary that the latter's corporate exercise was disregarded so as to cause the residential corporation to act as the nonresidential corporate defendant's ego." *Id.* at

failed to link Dassault Aviation to Arkansas except as a parent corporation and that Dassault Aviation's mere ownership of Dassault Falcon Jet was insufficient to justify subjecting it to this Court's jurisdiction. *See* Mem. and Order at 12.

A panel of the Eighth Circuit reversed. Apparently disavowing *Epps*' ruling that the forum contacts of a subsidiary corporation may not be used to find personal jurisdiction over its nonresident parent company unless there is a basis for piercing the corporate veil, the panel instead found that "whether or not Dassault Falcon Jet is [Dassault Aviation's] alter ego," "common sense" dictated that the "close, synergistic relationship" between Dassault Aviation and Dassault Falcon Jet, although "not an abuse of the corporate organizational form," was such that jurisdiction over Dassault Aviation in this Court "would be reasonable and fair." *Anderson v. Dassault Aviation*, 361 F.3d 449, 453, 455 (8th Cir. 2004).

Following the Eighth Circuit's determination that Dassault Aviation is subject to personal jurisdiction in Arkansas, the district court in Michigan transferred Anderson's action against Honeywell and Dassault Falcon Jet, *Anderson v. Dassault Aviation, et al.*, No. 1:01cv00640 (W.D. Mich.), to this Court. Anderson subsequently moved to consolidate the two actions and this Court, by Order dated September 27, 2004, granted Anderson's motion.

II.

Dassault Aviation moves for an Order declaring that Michigan substantive law applies to all claims against it in this action on grounds that Michigan is the only state with significant connections to this case and, thus, it is the only state with significant interests at stake. Anderson, in turn, argues that Michigan has no interest in applying its producer protective laws in the present action to the detriment of one of its residents.

648-49.

A.

This Court applies Arkansas choice of law principles in determining which state's law applies to plaintiff's claims against Dassault Aviation. *See Miller v. Pilgrim's Pride Corp.*, 366 F.3d 672, 673 (8th Cir. 2004) ("A district court applies the law of the forum state when exercising its diversity jurisdiction"); *Larken, Inc. v. Wray*, 189 F.3d 729, 732 (8th Cir.1999) ("A federal court must apply the choice of law rules of the forum state ...."). In that respect, the Arkansas Supreme Court has adopted Professor Robert A. Leflar's five-factor approach to deciding choice of law questions. *Miller*, 366 F.3d at 674 (citing *Wallis v. Mrs. Smith's Pie Co.*, 261 Ark. 622, 550 S.W.2d 453, 456 (1977)). Arkansas has not, however, altogether discarded the more traditional approach represented by the *lex loci delicti* rule, *see id.* (citing *Gomez v. ITT Educ. Servs., Inc.*, 348 Ark. 69, 71 S.W.3d 542, 546 (2002)), that is, that a court should apply the substantive law of the place where the injury occurred. *Dorman v. Emerson Elec. Co.*, 23 F.3d 1354, 1359 (8th Cir.), *cert. denied*, 513 U.S. 964 (1994). Rather, "the adoption of the Leflar factors in *Wallis* and subsequent cases appears to be merely a softening of what previously has been a rigid formulaic application of the former rule of law." *Gomez*, 348 Ark. at 77, 71 S.W.3d at 546. Accordingly, this Court must consider the *lex loci delicti* rule within the framework of the five Leflar factors: (1) predictability of results; (2) maintenance of the interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law. *Miller*, 366 F.3d at 674 (citing *Gomez*, 348 Ark. 69, 71 S.W.3d at 546).

B.

1.

The first of the five Leflar factors – predictability of results – is primarily aimed at avoiding forum shopping and ensuring uniform results. *Miller*, 366 F.3d at 674 (citing *Gomez*, 348

Ark. 69, 71 S.W.3d at 547). Predictability of results is not implicated when an action arises out of an accident, however, and as this suit does stem from an accident, this factor has no real relevance in ascertaining whether Arkansas or Michigan law should apply to this action. *See id.*; *Hughes v. Wal-Mart Stores, Inc.*, 250 F.3d 618, 620 (8th Cir. 2001).

2.

The second factor – maintenance of the interstate and international order – is not of great concern here as "[p]arties are unlikely to seek out Arkansas to undertake tortious behavior and thereby upset interstate order based on whether Arkansas or [Michigan] law applies in this case." *Miller*, 366 F.3d at 674 (citing *Gomez*, 348 Ark. 69, 71 S.W.3d at 547). In addition, this factor is generally not implicated if the state whose law is to be applied – in this case, Michigan – has "sufficient contacts with and interest in the facts and issues being litigated." *Hughes*, 250 F.3d at 620 (citation omitted). Conversely, "where a state has little or no contact with a case and nearly all of the significant contacts are with a sister state, the factor suggests that a state should not apply its own law to the dispute." *Id.* at 620-21 (internal quotation marks and citation omitted).

This factor points towards an application of Michigan law as the events surrounding Anderson's injuries occurred in Michigan. Indeed, *nothing* of relevance to this action is alleged to have occurred in Arkansas. As previously noted, Anderson is a Michigan resident, the accident occurred in Michigan, the flight in question originated in Michigan, and the aircraft was owned by Anderson's employer, a Michigan Corporation. In addition, Anderson received her medical treatment in Michigan, many accident and damages witnesses are in Michigan, and the design and manufacture of the subject aircraft and the Honeywell autopilot at issue had no connection to Arkansas.

The only "contact" that Arkansas has to the litigation is that Dassault Aviation's subsidiary – Dassault Falcon Jet – operates

a large completion center and service base in the state.[4] However, the mere fact that the subject aircraft may have been painted and customized in Arkansas by Dassault Falcon Jet where it was then sold to Anderson's Michigan employer some years prior to the accident is not, for purposes of interstate and international order, so significant a contact *on the part of Dassault Aviation*, which had passed title to the aircraft in France prior to its entry into Arkansas, that Michigan law should be trumped in favor of Arkansas law. In this respect, the Eighth Circuit, as previously noted, acknowledged that Dassault Aviation's and Dassault Falcon Jet's relationship was "not an abuse of the corporate organizational form," *see Anderson*, 361 F.3d at 453, and concluded that Dassault Aviation had sufficient contacts with Arkansas to support an Arkansas court's jurisdiction over it "whether or not Dassault Falcon Jet is its alter ego." *See id.* This Court thus presumes for today's purposes that the Eighth Circuit, although determining that there was a "close, synergistic relationship" between Dassault Aviation and Dassault Falcon Jet such that personal jurisdiction over Dassault Aviation in this Court "would be reasonable and fair," *see id.* at 453, 455, did not disturb this Court's conclusion in its Memorandum and Order granting Dassault Aviation's motion to dismiss that Anderson failed to show that Dassault Aviation "'so controlled and dominated the affairs of [Dassault Falcon Jet] that the latter's corporate existence was disregarded so as to cause the residential corporation to act as the

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[4] In its Memorandum and Order granting Dassault Aviation's motion to dismiss for lack of personal jurisdiction, this Court noted that "completion" in this context refers only to the fact that new Falcon jets are flown in "green" condition (equipped with basic avionics, but without exterior paint or passenger interior, or without optional equipment) from the factory in France to, among other places, Little Rock, Arkansas, where they are "completed" to customer specifications. Mem. and Order at 10. In this respect, it was undisputed that in 1994 Dassault Falcon Jet Corporation purchased the jet in France from Dassault Aviation, took title to and possession of the jet in France, and *then* brought the jet into Arkansas, "completed" it, and sold it to Anderson's employer. *Id.*

nonresidential corporate defendant's alter ego,' thus imputing Dassault Falcon Jet Corporation's acts to Dassault Aviation." *See* Mem. and Order at 9-10 (quoting *Epps*, 327 F.3d at 649).

3.

The third factor – simplification of the judicial task – is not at issue here as application of either state's law will not simplify this Court's task. A federal district court is often faced with the task of applying some state's law other than that of the forum state, and this Court is equally capable of resolving the dispute under Michigan or Arkansas law. *See Miller*, 366 F.3d at 674; *Hughes*, 250 F.3d at 620.

4.

The fourth factor – advancement of the forum's governmental interests – does not support an application of Arkansas law as Arkansas's governmental interests in this matter are slight and would not be advanced by any such application given that Anderson is a Michigan resident and the events surrounding her injuries occurred in Michigan. "Absent some relevant connection between a state and the facts underlying the litigation, we fail to see how any important Arkansas governmental interest is significantly furthered by ensuring that nonresidents are compensated for injuries that occur in *another state*." *Hughes*, 250 F.3d at 621 (emphasis in original). *See also Gomez*, 348 Ark. at 78, 71 S.W.3d at 547 ("[a]pplying Arkansas law to this case would do little or nothing to advance Arkansas' governmental interests, as no citizen of Arkansas is involved").

It is true that in determining that Dassault Aviation was subject to personal jurisdiction in Arkansas, the Eighth Circuit stated that "Arkansas has a substantial interest in the matter to be litigated, as the safety of Falcon jets affects the state's consumers and workers who encounter Dassault Aviation's products." *See Anderson*, 361 F.3d at 455. The Eighth Circuit immediately followed this statement by stating that "[t]hough the injury did not occur in Arkansas, and Ms. Anderson is not

an Arkansas resident, the jet at issue here was completed and delivered to its buyer in Arkansas, as are many Falcon jets." *See id.* These statements were made without citation to any authority and, failing as they did to address Arkansas' choice of law considerations (as well as the Eighth Circuit's own precedent in *Miller*, 366 F.3d 672, and *Hughes*, 250 F.3d 618), can only be considered to have been made solely in the context of personal jurisdiction analysis and not intended to apply to any choice of law analysis. Indeed, applying the Eighth Circuit's statements in this choice of law context would mean that Arkansas would have an interest in having its law apply to every accident involving a Dassault Aviation aircraft that was at some point painted and customized in Arkansas – no matter where in the world such an accident might occur – simply because of the presence in Arkansas of Dassault Aviation's wholly owned subsidiary. The Eighth Circuit may have been concerned that Anderson had a forum "available to her in this country" for her suit against Dassault Aviation and concluded that Arkansas "seem[ed]" to be the appropriate forum for the litigation, *see Anderson*, 361 F.3d at 455, but it surely could not have intended such a far reaching pronouncement as to choice of law.

5.

The fifth factor – application of the better rule of law – does not reflect a subjective judicial preference for one state's more or less elegant law, but is aimed at avoiding the application of unfair or archaic laws. *Miller*, 366 F.3d at 675 (citing *Hughes*, 250 F.3d at 621). Although Michigan law may include tort reform provisions that, in the words of Anderson, are "producer protective" and "corporate friendly," this Court cannot say that Michigan law is unfair or archaic. Moreover, "[c]ourts often refrain from resolving a conflict of law question based on the better rule of law factor, recognizing that states often have competing policy considerations for governing similar transactions or events in different manners such that the laws do not necessarily lend themselves to being labeled either 'better' or 'worse.'" *Hughes*, 250 F.3d at 621. This Court similarly

declines to determine this choice of law question based on which state's law is better, particularly considering that the other Leflar factors point decidedly towards the application of Michigan law. *See id.* (noting that "[o]ur court has been especially hesitant to pronounce the better law when other Leflar factors point decidedly towards the application of one state's law").

6.

Finally, the Court notes that an additional consideration in favor of applying Michigan substantive law is that Anderson herself chose Michigan as the forum for this litigation when she first filed it. The case is before this Court solely because the district court in Michigan found that it lacked personal jurisdiction over Dassault Aviation. Nothing in the law or the facts even remotely suggested that Arkansas law should apply until this litigation was instigated. It can hardly be unfair to Anderson to apply the substantive law of her preferred forum.

III.

In sum, having considered the traditional *lex loci delicti* rule – that a court should apply the substantive law of the place where the injury occurred – within the framework of the five Leflar factors, this Court determines that Michigan substantive law applies to all claims against Dassault Aviation in this action.

IT IS THEREFORE ORDERED that Dassault Aviation's motion for an Order declaring that Michigan substantive law applies to all claims against it in this action [doc.#36] be and it hereby is granted.

Dated this 16th day of November 2004.

/S/ [Susan Webber Wright]
CHIEF JUDGE
UNITED STATES DISTRICT COURT